IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
SECOND APPEAL NO.335 OF 2005

Shivprasad Lingappa Uchale .. Appellant
Orig. Plaintiff

V/s.

Balu Krishna Kalage .. Respondent
Orig. Defendant

Shri N.V. Walawalkar learned Senior Counsel i/b. Shri G.H. Keluskar with Devidas Keluskar for the Appellant
Shri M.S. Karnik learned Advocate for the Respondent

CORAM : S.R. SATHE,J.
DATED : 06/07/2007

ORAL JUDGEMENT :-

1. The Appellant-Original Plaintiff-landlord has filed this appeal against the judgement and order passed in regular Civil Appeal No.151 of 2000 by the Court of Additional District Judge, Sindhudurg-Orus whereby the decree for eviction passed against the defendants-tenants by the Court of CJJD, Kankavali in Regular Civil Suit No.34 of 1995 was set aside and Plaintiff's suit for possession against the defendant-tenant was dismissed. For the sake of convenience hereafter the parties shall be referred to as Plaintiffs and defendant.

2. The brief facts giving rise to this appeal are as under :-

House property bearing Gram Panchayat No.221

(old number.77) situated at Kankavali is owned by the Plaintiffs. The defendant was inducted as monthly tenant at monthly rent of Rs.25/- in the said property. According to Plaintiff, the suit property was leased out to defendant only for the purpose of godown i.e. for storage of tobacco. The defendant had not paid the rent regularly and was in arrears of rent. Plaintiff wanted the suit premises bonafide and reasonable. He, therefore, issued notice dated 13/02/1995 to the defendant and terminated his tenancy by the end of 28/02/1995 and called upon him to hand over the possession of the suit property as well as arrears of rent for the past 3 years i.e. Rs.900/-.

3. After receipt of the notice, defendants sent draft for the amount of Rs.3,500/- to the Plaintiff. However, Plaintiff did not accept the same apprehending that acceptance of the said amount would amount to waiver of notice issued by him. As defendant refused to hand over the possession, Plaintiffs filed Regular Civil Suit No.34 of 1995 on 15/03/1995 in the Court of CJJD, Kankavali for the possession of the suit premises.

4. The defendant-tenant filed his Written

Statement at Exh-15 and admitted that the suit premises was in his possession as tenant. He further contended that the said premises were not taken on lease only for the purpose of godown but the same were taken on lease for the godown as well as residence and accordingly, since the year 1960, he is using the same for the purpose of godown as well as for the residence. The defendant also denied the Plaintiffs' claim that suit premises are required by him bonafide and reasonably for carrying on his business or for his residence. According to him, Plaintiff was in occupation of several premises and was not at all in need of the suit premises. The defendant also contended that on the receipt of the notice, he remitted the amount of Rs. 3,500/- by cheque but Plaintiffs did not accept the same and as such it can not be said that defendant is a defaulter. Hence, on all these grounds, the defendant prayed for dismissal of the suit.

5. On these pleadings, the learned Trial Judge framed issued at Exh-17. In order to prove the suit claim the Plaintiff examined himself and produced certain documents. As against this, the defendant also examined himself. After considering the evidence adduced by both the parties, the learned Trial Judge

came to the conclusion that suit premises were taken on lease by the defendant only for the purpose of godown i.e. storage of tobacco and as such, provisions of The Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 are not applicable to the suit premises. He also held that the provisions of Transfer of Property Act are applicable to the suit premises and accordingly, Plaintiff has rightly terminated the defendant's tenancy by issuing notice under section 106 of the Transfer of Property Act. He, therefore, passed decree for eviction against the defendant-tenant.

6. Being aggrieved by the above mentioned order the defendant-tenant filed Regular Civil Appeal No.151 of 2000 in the Court of Additional District Judge, Sindhudurg. It was argued on behalf of defendant-tenant that the provisions of Maharashtra Rent Control Act, 1999 (hereafter called as said Act) are applicable to the suit premises since 31/03/2000 and as such, the suit filed as per the provisions of the Transfer of Property Act in the Court of CJJD is not maintainable and decree for eviction passed by the Trial Court is incorrect.

7. After hearing arguments of both the learned

Advocates, the learned Additional District Judge came to the conclusion that as soon as the provisions of the said Act were made applicable to the premises let out for storage at Kankavli Town, Civil Court had no jurisdiction to pass decree under section 106 of Transfer of Property Act in respect of the suit premises. He, therefore, allowed the appeal and set aside the order of eviction passed against the defendant and dismissed the suit filed by the Plaintiffs-landlords.

8. Being aggrieved by the above mentioned order, the Plaintiff-landlord filed the present second appeal. In this appeal before me, Shri Walavalkar, learned Senior Advocate for the Plaintiff has urged only one point. He submitted that the said Act came into force from 31/03/2000 but on that day defendant's tenancy was already terminated and suit for eviction was filed against him in the Court of CJJD for eviction. So, the defendant was a tenant at sufferance and was not a 'tenant' as contemplated by section 7(15) of the said Act and as such, the provisions of the said Act were in fact not applicable to the present defendant. He, therefore, submitted that the learned Additional District Judge wrongly held that provisions of the said

Act are applicable to the present case and therefore, reached to a wrong conclusion and dismissed the suit. He, therefore, submitted that the appeal be allowed and order passed by the learned Additional District Judge be set aside and decree for eviction passed by the Trial Court be restored. As against this, Shri Karnik, learned Advocate for the defendant-tenant supported the judgement and order passed by the learned Additional District Judge. He submitted that defendant falls in the definition of a 'tenant' under section 7(15) of the said Act and as such, he is protected by the said Act.

9. From the submissions made before me the only substantial question of law that falls for my consideration is whether the defendant falls in the definition of 'tenant' as per section 7(15) of the Maharashtra Rent Control Act, 1999, though his tenancy was terminated by notice dated 03/02/1995 and suit was pending on the day when the said act came into force on 31/03/2000. It is not in dispute that defendant was monthly tenant of Plaintiff though defendant had contended that the suit premises were taken on lease for storage of tobacco as well as residence. Concurrent finding of fact is recorded by the Courts below whereby it is held that the suit premises were leased to the

defendant for the purpose of storage of tobacco. It is also an admitted fact that when defendant's tenancy was terminated by notice dated 3/2/1995 and suit was filed on 15/3/95, the Provisions of Bombay Rent Act were not applicable to the premises as the same were leased out for godown purposes and as such, suit was filed against the defendant-tenant as per the provisions of the Transfer of Property Act in Civil Court. It is an admitted fact that after coming into operation of the Maharashtra Rent Control Act, 1999, provisions of the said Act are made applicable to the premises situated at Kankavali which are being used for godown. So, the main question is whether the provisions of the said Act are applicable to the defendant's tenancy from 31/03/2000.

10. Shri Walawalkar, learned senior Advocate for the Plaintiff strenuously argued before me that in the instant case the present defendant was in fact not a 'tenant' as contemplated under section 7(15) of the said Act when the said Act came into force i.e. on 31/03/2000, because at that time, the tenancy of the defendant was already terminated and he was in fact a 'statutory tenant' or 'tenant at sufferance' and such tenant i.e. 'statutory tenant' or 'tenant at

sufferance' is not included in the definition of a 'tenant' under the said Act. Thus, according to him, there is a material difference between definition of a 'tenant' given in section 5(11) of the Old Bombay Rent Act and the definition of 'tenant' given in The Maharashtra Rent Control Act, 1999. In order to find out whether there is any substance in the arguments advanced in this behalf it would be worthwhile to see what section 7(15) of the said Act says. It runs as follows :-

Section -7

xxxxx

(15) *"tenant" means any person by whom or on whose account rent is payable for any premises and includes -*

(a) such person --

(i) who is a tenant, or

(ii) who is a deemed tenant, or

(iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or

(iv) who has derived title under a tenant, or

(v) to whom interest in premises has been assigned or transferred as permitted.

by virtue of, or under the provisions of, any of the repealed Acts ;

(b) a person who is deemed to be a tenant under section 25,

(c) a person to whom interest in premises has been assigned or transferred as permitted under section 26;

(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who, --

(i) where they are let for residence, is residing, or

(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,

with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the Court.

11. It would be worthwhile to see what is the definition of 'tenant' given in the old Bombay Rent Act. It runs as follows :-

> *5(11) "tenant" means any person by whom or on whose account rent is payable for any premises and includes--*
>
> *(a) such sub-tenants and other persons as have derived title under a tenant {before the 1st day of February, 1973;}*
>
> *{(aa) any person to whom interest in premises has been assigned or transferred as permitted or deemed to be permitted, under section 15;}*
>
> *(b) any person remaining, after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has deprived title {before the first day of February, 1973};*
>
> *{(bb) such licensees as are deemed to be tenants for the purposes of this Act by Section 15A;}*

12. From the bear reading of the above mentioned two definitions, it is very clear that in the Maharashtra Rent Control Act, 1999, there is no specific word as 'Statutory tenant' or 'tenant at sufferance'. However, merely because such word is absent that does not mean that a tenant whose tenancy is terminated but who is in occupation of the suit premises is not covered by the present definition given in section 7(15) of the said Act. On the contrary, the very words “tenant means any person by whom or on whose amount rent is payable for any premises” indicates that the present defendant falls in the definition of the 'tenant'. Besides this, admittedly, the person who is a deemed tenant is included in the definition of a 'tenant'. Similarly, as per clause 7(15)(b) a person who is deemed to be a tenant under section 25 of the Maharashtra Rent Control Act, 1999 is also included in the definition of a 'tenant'. The said section 25 runs as follows :-

> ***25. Certain sub-tenants to become tenants on determination of tenancy.***
>
> *When the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sub-let*

and such sub-tenancy is subsisting on the date of commencement of this Act or where sub-tenancy is permitted by a contract between the landlord and the tenant, such sub-tenant shall, subject to the provisions of this Act, be deemed to become the tenant of his landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued.

13. Thus, if we take into consideration the various types of tenants that have been included in the definition of a tenant under section 7(15) of the said Act, it is very clear that a tenant holding over after the determination of the contractual tenancy is included in the definition (The Maharashtra Rent Control Act by D.M. Choudhary August-2000 edition Page 101) So, the present defendant whose tenancy has been terminated but who is holding over must be treated as a tenant under Maharashtra Rent Control Act. From the perusal of the section, it appears that in the said Act the definition of a 'tenant' is widen. When as per section-25 even a sub-tenant of tenant whose tenancy has been determined is covered by the definition of a

'tenant' given in Section 7(15), it has to be held that a tenant whose tenancy has been terminated is obviously included in the definition of word 'tenant'. So, merely because the express word 'statutory tenant' is not provided in section 7(15), I am not inclined to hold that in the Maharashtra Rent Control Act, 1999 the word 'tenant' does not include tenant who is holding over or whose tenancy has been terminated.

14. Once a defendant is held to be a tenant under the said Act then obviously provisions of the said Act are applicable to him and is entitled to get protection of the said Act. The thirst of the argument of the learned Senior Advocate for the Plaintiff was on the point that the defendant is not a 'tenant' under the new Act. He has in fact not seriously challenged before me the point that even if the defendant is treated as a tenant, the provision of Part-II of the Maharashtra Rent Control Act, 1999 is not applicable to him because at the relevant time, suit was already filed by the landlord against him for the possession of the property. Even in the Written submissions that have been filed on behalf of Plaintiff it is stated that the defendant is not a tenant under the new Act and as such provisions relating to exclusive jurisdiction vested in

Rent Court under section 33 of the new Act of 1999 and consequent ouster of the jurisdiction of the Civil Court will not apply to the present case.

15. In order to find out as to what is the legal position with regard to jurisdiction it would be worthwhile to see section 33 of the said Act. It runs as follows :-

> ***33. Jurisdiction of courts.***
>
> *(1) Notwithstanding anything contained in, any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction,--*
>
> *(a) in Brihan Mumbai, the Court of Small Causes, Mumbai,*
>
> *(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1897, such court, and*
>
> *(c) elsewhere, the court of the Civil Judge (Junior Division) having*

jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of the Civil Judge (Senior Division) having ordinary Jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under this Act (other than the applications which are to be decided by the State Government or an officer authorized by it or the Competent Authority); and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.

(2) (a) Notwithstanding anything contained in clause (b) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887,

and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area ;

(b) where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit proceeding or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn;

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, be deemed to be the Court of Small Causes.

16. While considering this aspect, one has to see as to what is the provision of section 15 and 16 of the said Act. The said sections run as follows :-

15. No ejectment ordinarily to be made if tenant pays or is ready and willing to

pay standard rent and permitted increases.

(1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the, standard rent and permitted increases, if any, and observes and performs the other, conditions of the tenancy is so far as they are consistent with the provisions of this Act.

(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in section 106 of the Transfer of Property Act, 1882.

(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the

date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit finally decided and also pays cost of the suit as directed by the court.
(4) Pending the disposal of any suit, the Court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

16. When landlord may recover possession.
(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied -
(a) that the tenant has committed any act contrary to the provisions of clause (o)

of section 108 of the Transfer of Property Act, 1882;

17. It was tried to be argued on behalf of Plaintiff that the said Act came into force on 31/03/2000 but by that time, the defendant's tenancy was terminated and suit for eviction was pending before the Court of CJJD and Plaintiff had acquired valuable right to evict the defendant-tenant and so, even though, the said Act came into force on 31/03/2000 and the premises given on lease for the purpose of storage were also brought under purview of the Maharashtra Rent Control Act, 1999, the said provisions can not be made applicable to the present defendant because it would amount to taking away the valuable right accrued in favour of Plaintiff. Shri Karnik, learned Advocate for the defendant argued before me that having regard to the fact that the Rent Control Act has been introduced for the protection of tenants and it is a special Act, the Provisions of the said Act must be made applicable to all the tenants including tenants against whom the proceedings are pending. While considering this aspect it is worth to see what section 58 of the said Act says. It runs as follows :-

58. Repeal and Saving.

(1) On the commencement of this Act, the following laws, that is to say,-

(a) the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947;

(b) the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 including the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949; and

(c) the Hyderabad Houses (Rent, Eviction and Lease) Control Act, 1954 shall stand repealed.

(2) Notwithstanding such repeal--

(a) all applications, suits and other proceedings under the said Acts pending, on the date of commencement of this Act before any Court, Controller, Competent Authority or other office or authority shall be continued and disposed of, in accordance with the provisions of the Acts so repealed, as if the said Acts had continued in force and this Act had not been passed;

(b) the provisions for appeal under the Acts so repealed shall continue in force

in respect of applications, suits and proceedings disposed of thereunder;

(c) any appointment, rule and notification made or issued under any of the repealed Acts and in force on the date of commencement of this Act shall, in so far as they are not inconsistent with the provisions of this Act, be deemed to have been made or issued under this Act and shall continue in force until it is superseded or modified by any appointment, rule or notification or issued under this Act;

(d) all prosecutions instituted under the provisions of any of the repealed Acts shall be effective and disposed of in accordance with the law.

18. Relying on this section, one may argue that what is saved by the said section, is the proceeding which are pending against tenant filed as per the provisions of the Bombay Rent Act. But the suit that was pending against the defendant was admittedly not filed as per the provisions of Bombay Rent Act but the same was filed under the provisions of the Transfer of

Property Act and there is no mention in section-58 that it had repealed the Transfer of Property Act. Shri Karnik submitted that though it is not mentioned that Transfer of Property Act or any of its provisions are repealed, when new Rent Control Act is introduced and as per the said Act premises in question are governed by the said Act then benefit of the same has to be given to the tenant. For this proposition, he has placed reliance on a case **Shah Bhojraj Kuverji Oil Mills and Ginning Factory V/s. Subhash Chandra Yograj Sinha AIR 1961 SUPREME COURT 1596.** In that case, there was termination of tenancy of the tenant by aflux of time on 14/03/1957. The landlord filed suit for possession against the tenant on 25/04/1957. In the meanwhile, under section 6 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 the resolution was issued applying part-II of the Bombay Rent Act to the area where the property was situated. The tenant, therefore, claimed protection of section-12 of the Bombay Rent Act. Question arose whether tenant can claim such protection and thereby, deprive landlord of the right of possession. The Apex Court after considering relevant provisions observed that while it is the ordinary rule that substantive rights should not be held to be taken away except by express provision or

clear implication, many Acts, though prospective in form, have been given retrospective operation, if the intention of the legislature is apparent. This is more so, when Acts are passed to protect the public against some evil or abuse. So, the Apex Court held that though suit was pending against the defendant for eviction he was entitled to get protection of Section 12 of the Bombay Rent Act. If we take into consideration the reasoning adopted by the Apex Court in the above cited rulings, then on the same analogy, in the instant case also it has to be held that the provisions of the said Act are applicable to the present defendant though suit was actually filed against him. In fact, similar view has taken by the Apex Court in a case **H.Shiva Rao and another V/s. Cecilia Pereira and others AIR 1987 SUPREME COURT 248.** Therein also the Apex Court has observed

> *" 4. It was held by this Court in Mani Subrat Jain V/s. Raja Ram Vohra (1980) 2 SCR 141 : (AIR 1980 SC 299) dealing with Section 2(1) of East Punjab Urban Rent Restriction Act which defines 'tenant' more or less in similar term as the present Act that in view of such a definition of the 'tenant' in Rent*

Control Act, the fact that by the time the Act came into force a decree or any other process extinguished the tenancy under the general law of real property does not terminate the status of a tenant so long as he continues in possession and his possession can not be terminated except as provided for in the Rent Control Act. It is well settled legal principle that Rent Control legislations being beneficial to the tenant have to be given a liberal interpretation. While ordinarily substantive rights should not be held to be taken away except by express provision, or clear implication in the case of Rent Control Act, it being a beneficial legislation the provision which confers immunity to the tenant against eviction by the landlord though prospective in form operates to take away the right vested in the landlord by a decree of a Court which has become final, unless there is express provision or clear implication to the contrary."

19. So, having regard to the above observations of the Apex Court and the fact that there is no express provision in the said Act to save pending proceedings filed against the tenant as per provisions of Transfer of Property Act, it has to be held that from 31/03/2000 the provisions of the said Act are applicable to the suit premises and to defendant's tenancy.

20. The learned Senior Advocate for the Plaintiff has drawn my attention to a case **Shrikant Golvankar V/s. Rockey Dominick Gulas and others AIR 2001 BOMBAY 287** wherein the Division Bench of this Court has held that a tenant who has suffered decree for eviction when provisions of part-II of the Act were not applicable to residential premises in area of particular village is not entitled to protection and benefit of part-II of the Act which was made applicable to the said premises during the pendency of appeal filed by tenant. However, careful reading of the said authority shows that as there was express provision whereby the decree obtained against the tenant as per the old provision was saved, it was held that during the pendency of the appeal the tenant is not entitled to claim the protection and benefit of part-II. So, facts of the above mentioned

case are quite different from the facts of the present case and as such, above cited rulings is of no use to the Plaintiffs.

21. In view of the above discussion I have no hesitation to hold that the present defendant whose tenancy was terminated and suit was pending against him was covered by the definition of 'tenant' given in Section 7(15) of the said Act and secondly, he is entitled to get protection under the said Act and as such, Civil Court had in fact no jurisdiction to try the present suit after 31/03/2000. I am therefore, of the view that the learned Additional District Judge has rightly allowed the appeal and dismissed the Plaintiff's suit. Hence, I pass following order.

O R D E R

Appeal is dismissed.

Under the circumstances of the case, parties to bear their own costs throughout.

(S.R. SATHE,J.)